

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5943 / January 11, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20700

In the Matter of

**Comprehensive Capital
Management, Inc.,**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 203(e) AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS AND IMPOSING
REMEDIAL SANCTIONS, AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Comprehensive Capital Management, Inc. (“CCM” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Advisers Act, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

From 2017 through March 2021, CCM, a registered investment adviser, misrepresented fee-related information and failed to disclose conflicts of interest in its Forms ADV Part 2A concerning commissions paid to an affiliated broker-dealer and its associated persons (in their capacity as registered representatives of the affiliated broker dealer), resulting in CCM improperly receiving \$66,635. Further, CCM's advisory agreements included liability disclaimer language, commonly referred to as a hedge clause, which could lead a client to believe incorrectly that the client had waived a non-waivable cause of action against the adviser provided by state or federal law. In addition, CCM failed to maintain accurate records of its discretionary accounts, and failed to adopt and implement required compliance policies and procedures.

Respondent

1. CCM is a New Jersey corporation with headquarters in Rockaway, New Jersey, and has been registered with the Commission as an investment adviser since 2002. It provides investment advisory services to clients through a nationwide network of approximately 20 investment advisor representatives ("IARs"). In its Form ADV filed March 30, 2021, CCM reported regulatory assets under management of approximately \$63 million. CCM's IARs conduct business under their own names and are also registered representatives of CCM's affiliated broker-dealer ("affiliated broker"). Most, if not all, of CCM's clients are retail investors.

2. On July 29, 2013, the Commission instituted and simultaneously settled proceedings against CCM. *In the Matter of Comprehensive Capital Management, Inc.*, Advisers Act Rel. No. 3636, File No. 3-15393 (July 29, 2013). The Commission found that CCM violated federal securities laws by failing reasonably to supervise an associated person of CCM, who misappropriated over \$16 million from investment advisory accounts managed by CCM. The Commission further found that CCM violated the books and records provisions of the Advisers Act by failing to maintain certain required records and also violated the rules under the Advisers Act, which require firms to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act. Specifically, CCM was found to have violated Sections 203(e)(6), 204, and 206(4) of the Advisers Act and Rules 204-2(a)(7), 204(a)(8), 204-2(a)(9), 204-2(a)(10), 204-2(e)(1) and 206(4)-2 thereunder. In connection with this order, CCM retained an

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

independent compliance consultant and paid a civil penalty of \$120,000. According to the order, the Commission considered CCM's cooperation and remedial acts it promptly undertook.

3. On September 30, 2019, the Commission instituted and settled administrative proceedings against CCM for breaches of fiduciary duty and inadequate disclosures in violation of Section 206(2) of the Advisers Act, in connection with its mutual fund share class selection practices and the fees its affiliated broker received pursuant to Rule 12b-1 under the Investment Company Act of 1940. *In the Matter of Comprehensive Capital Management, Inc.*, Advisers Act Rel. No. 5380, File No. 3-19547 (Sept. 30, 2019). CCM self-reported to the Commission the violations pursuant to the Division of Enforcement's Share Class Selection Disclosure Initiative. CCM paid disgorgement of \$83,401, which it distributed to affected investors. According to the 2019 Order, a civil penalty was not imposed based on CCM's self-reporting.

Misstatements in Form ADV

4. Investment advisers use a three-part form called Form ADV to register with the Commission as well as with the relevant state securities authorities. Part 2 of Form ADV is the primary disclosure document for registered investment advisers, which is further divided into Part 2A (also known as the brochure) and Part 2B (also known as the brochure supplement). Part 2A of Form ADV requires investment advisers to prepare plain English disclosures of, among other things, the adviser's fees and conflicts of interest. Investment advisers are required to deliver a brochure containing all of the information required by Part 2A of Form ADV to clients, which is also made available to the public on the SEC's website.

5. From 2017 through March 2021, CCM's brochure had misleading disclosures that affected clients purchasing variable annuities for their advisory individual retirement accounts ("IRAs"). From at least January 2017 until May 2019, CCM's brochure stated that if its affiliated broker received commissions from the sale of variable annuity products in IRA advisory accounts, CCM would offset the advisory fees it charged by the amount of the commissions collected. However, during this period, CCM's clients did not receive any offset to their advisory fees for commissions charged. As a result, contrary to CCM's disclosures, its affiliated broker and CCM's associated persons collected commissions on investment products purchased in clients' IRA accounts, and CCM charged advisory fees on those same accounts. Specifically, CCM clients who purchased variable annuity products in their retirement accounts paid commissions to its affiliated broker, at origination and on an ongoing basis. These clients also paid advisory fees to CCM based on the amount of assets under management in the advisory account, which included the variable annuity.

6. In May 2019, CCM amended its brochure to remove the paragraph about offsetting commissions and to add a disclosure about its IARs' conflicts of interest. The disclosure stated that the conflict of interest would be mitigated because IARs (in their capacity as registered representatives of its affiliated broker) would not receive commissions from the sale of products into advisory accounts. However, CCM's revised brochure was misleading because CCM's IARs continued to receive commissions in their capacity as registered representatives of its affiliated broker. In addition, CCM still failed to address its own conflict of interest, since its affiliated broker received commissions at the firm level from the sale of investment products. Finally, in March 2021, CCM amended its brochure to address conflicts of interest on behalf of the firm and

its IARs. As a result of the misleading disclosures in its 2017 through March 2021 brochures, CCM improperly charged 11 clients who purchased variable annuities into their advisory IRA accounts a total of \$66,635.

Improper Limitation of Liability in Advisory Agreement

7. The Advisers Act establishes a federal fiduciary duty for investment advisers. An adviser's federal fiduciary duty may not be waived, though its application may be shaped by agreement. Moreover, advisory agreements may not misrepresent, or contain misleading statements regarding, the scope of an adviser's unwaivable fiduciary duty and lead a client to believe incorrectly that the client has waived a non-waivable cause of action against the adviser provided by state or federal law. This is true even if there is a disclaimer (sometimes known as a "savings clause" or "non-waiver" disclosure) stating that compliance with the state or federal securities laws is not waivable.

8. Language purporting to limit an adviser's liability in an advisory agreement is also called a "hedge clause." Whether a particular hedge clause is misleading is a facts-and-circumstances determination.

9. In 2018, staff from the Commission's Division of Examinations ("EXAMS") conducted an examination of CCM. During the examination, EXAMS observed that CCM's advisory agreements contained a hedge clause, which stated, in part:

"Client agrees to hold CCM, its officers, directors, employees, agents, independent contractors, and representatives forever harmless from all claims, liabilities, losses, damages, attorney's fees, costs and expenses which may arise from any act (on Client's behalf or for Client's account), omission, or insolvency of any broker/dealer, agency, professional, independent contractor or financial products salesperson. [...]"

The federal securities laws impose liabilities under certain circumstances on persons who act in good faith, and therefore nothing herein shall in any way constitute a waiver or limitation of any rights which the client or CCM may have under any federal securities laws."

10. This language purports to broadly limit CCM's liability. The hedge clause represented that the client was waiving "all claims" and that CCM could never be liable to the client for "any act," which included acts of gross negligence on the part of the investment adviser, willful misconduct, and fraud. Moreover, CCM had no policies and procedures to assess a client's sophistication in the law or to explain the meaning of the non-waiver disclosure. Nor was there evidence that CCM highlighted and explained the hedge clause during in-person meetings with each client and provided enhanced disclosure regarding when a client may retain a right of action. As a result, there was no evidence this non-waiver disclosure would be comprehended by retail clients. Accordingly, the hedge clause violated Section 206(2) of the Advisers Act.

11. In May 2019, CCM told EXAMS staff that it would not seek to enforce the hedge clause in any litigation or arbitrations with clients should they arise, but it did not make such a

representation to its current or former clients. CCM began to consider revisions to its advisory agreement.

12. On June 5, 2019, the Commission published the *Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, IA Rel. No. 5248 (June 5, 2019) (“Commission Statement”). The Commission Statement provided in relevant part that “there are few (if any) circumstances in which a hedge clause in an agreement with a retail client would be consistent with [] antifraud provisions, where the hedge clause purports to relieve the adviser from liability for conduct as to which the client has a non-waivable cause of action against the adviser provided by state or federal law. Such a hedge clause generally is likely to mislead those retail clients into not exercising their legal rights, in violation of the antifraud provisions, even where the agreement otherwise specifies that the client may continue to retain its non-waivable rights.” *Id.* at p. 11, fn. 31.

13. On or after June 28, 2019, CCM began distributing an advisory agreement with a revised hedge clause, which stated, in relevant part:

“CCM and its IARs will be liable only for their own acts of gross negligence or willful misconduct. CCM and its IARs will not be liable for any act or omission, or the failure or inability to perform any obligation, of any broker, dealer, investment adviser, sub-custodian or other agent, including affiliates, whom CCM selected with reasonable care. CCM will not be liable for any incidental, indirect, special, punitive or consequential damages. Federal and state securities laws may nonetheless impose liability on persons who act in good faith and nothing in this Agreement shall serve to waive or limit any rights Client may have under those laws.”

14. CCM did not make any additional revisions to the advisory agreement since the release of the Commission Statement.

15. CCM’s revised advisory agreement purports to relieve CCM from liability for conduct as to which the client has a non-waivable cause of action against CCM provided by federal or state law. The hedge clause is inconsistent with an adviser’s fiduciary duty and the Commission Statement because it may mislead CCM’s retail clients into not exercising their legal rights. Moreover, the statement that “CCM and its IARs will be liable only for their own acts of gross negligence or willful misconduct” is an inaccurate statement of the liability standards under the federal securities laws as they apply to investment advisers. Accordingly, both the original and the revised hedge clause violate Section 206(2) of the Advisers Act.

Books and Records Failures

16. Section 204(a) of the Advisers Act and Rule 204-2 thereunder requires registered investment advisers to keep true, accurate and current books and records relating to their investment advisory businesses. CCM failed to keep books and records required by this rule. Specifically, CCM failed to keep true, accurate, and current records of accounts in which it was vested with any discretionary power with respect to the funds, securities or transactions of any client.

Compliance Failures

17. Rule 206(4)-7 of the Advisers Act requires registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and rules thereunder and to review, no less frequently than annually, the adequacy of the policies and procedures established and the effectiveness of their implementation. CCM had written policies and procedures requiring that, among other things, CCM maintain the accuracy and consistency of disclosures regarding advisory services and fees in advisory agreements, brochures, marketing and other materials, as well as review its advisory agreement. Such policies and procedures were not implemented. CCM's written policies and procedures also required that CCM maintain client information, advisory account information, and related firm records, and that these records be maintained in a manner that afforded for easy location, access, and retrieval. However, CCM was unable to produce accurate client information, advisory account information, and related firm records. In addition, CCM's policies and procedures stated that, "CCM advisory agreements meet all appropriate regulatory requirements [...] and do not contain any 'hedge clauses.'" As described above, this was not implemented. Further, CCM neglected to fully implement the results of its compliance annual review. Accordingly, CCM failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act.

Violations

18. As a result of the conduct described above, CCM willfully² violated Section 206(2) of the Advisers Act, which makes it unlawful "to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), but rather may rest upon a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-195 (1963)).

19. As a result of the conduct described above, CCM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which require, among other things, that an investment adviser: (a) adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules; and (b) review at least annually its

² "Willfully," for purposes of imposing relief under Sections 203(e) and 203(f) of the Advisers Act, "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

written policies and procedures and the effectiveness of their implementation. A violation of Section 206(4) and the rules thereunder does not require scienter. *Steadman*, 967 F.2d at 647.

20. As a result of the conduct described above, CCM willfully violated Section 204(a) of the Advisers Act, which requires that investment advisers “make and keep” certain records and furnish copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. All records of the investment adviser are subject to periodic examinations by the Commission.

21. As a result of the conduct described above, CCM willfully violated Rule 204-2(a)(8) adopted under Section 204(a) of the Advisers Act. Rule 204-2 requires that an investment adviser “make and keep, true, accurate and current” books and records relating to its advisory business. Rule 204-2(a)(8) requires an investment adviser to keep a “list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.”

Disgorgement

22. The disgorgement and prejudgment interest ordered in Paragraph IV.F. is consistent with equitable principles and does not exceed Respondent’s net profits from its violations, and will be distributed to harmed investors to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Undertakings

23. Respondent has undertaken to:
- a. Within 30 days of the entry of this Order, notify affected investors (i.e., those former and current clients who, from January 2017 through April 2021, purchased variable annuities in IRA accounts and whose advisory fees were not offset by commissions charged) (hereinafter, “affected investors”) of the settlement terms of this Order in a clear and conspicuous fashion.
 - b. Within 40 days of the entry of this Order, certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Sheldon Pollock, Assistant Regional Director, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York 10281 with a copy to the Office of Chief Counsel of the Enforcement Division, 100 F Street, NE Washington, DC 20549, no later than sixty (60) days from the date of the completion of the undertakings.

- c. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent CCM's Offer.

Accordingly, it is hereby ORDERED that:

- A. Pursuant Section 203(k) of the Advisers Act, Respondent CCM shall cease and desist from committing or causing any violations and any future violations of Sections 204(a), 206(2) and 206(4) of the Advisers Act and Rules 204-2(a)(8) and 206(4)-7 thereunder.
- B. Respondent is censured.
- C. Respondent shall comply with the undertakings enumerated in Paragraph 23 above.
- D. CCM shall retain, within thirty (30) days of the entry of this Order, the services of an independent compliance consultant (the "Independent Consultant") that is not unacceptable to the Commission staff. The Independent Consultant's compensation and expenses shall be borne exclusively by CCM.

(i.) CCM shall provide to the Commission within thirty (30) days of the entry of this Order, a copy of the engagement letter detailing the Independent Consultant's responsibilities, which shall include comprehensive compliance reviews as described below in this Order. CCM shall require that the Independent Consultant conduct by the end of the March 31, 2022 and again at the end of March 31, 2023 a comprehensive review of CCM's supervisory, compliance, and other policies and procedures reasonably designed to prevent violations of the federal securities laws by CCM and its employees, including:

- (a) CCM's disclosures, and policies and procedures regarding the charging of fees, record-keeping, CCM's use of hedge clauses, and the suitability of Variable Annuities, among other investments, for different account types; and
- (b) Whether notice should be provided to current and/or former clients regarding changes in CCM's policies, advisory agreements or other materials.

(ii.) CCM shall require that, within forty-five (45) days from the end of the applicable quarterly period, the Independent Consultant shall submit a written and detailed report of

its findings to CCM and to the Commission staff (the “Report”). CCM shall require that each Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant’s recommendations for changes in or improvements to CCM’s policies and procedures and/or disclosures to clients, and a procedure for implementing the recommended changes in or improvements to CCM’s policies and procedures and/or disclosures.

(iii.) The reports by the Independent Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission’s discharge of its duties and responsibilities, or (4) is otherwise required by law.

(iv.) CCM shall adopt all recommendations contained in each Report within sixty (60) days of the applicable Report; provided, however, that within forty-five (45) days after the date of the applicable Report, CCM shall in writing advise the Independent Consultant and the Commission staff of any recommendations that CCM considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that CCM considers unduly burdensome, impractical or inappropriate, CCM need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

(v.) As to any recommendation with respect to CCM’s policies and procedures on which CCM and the Independent Consultant do not agree, CCM and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the applicable Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by CCM and the Independent Consultant, CCM shall require that the Independent Consultant inform CCM and the Commission staff in writing of the Independent Consultant’s final determination concerning any recommendation that CCM considers to be unduly burdensome, impractical, or inappropriate. CCM shall abide by the determinations of the Independent Consultant and, within sixty (60) days after final agreement between CCM and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, CCM shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

(vi.) Within ninety (90) days of CCM’s adoption of all of the recommendations in a Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, CCM shall certify in writing to the Independent Consultant and the Commission staff that CCM has adopted and implemented all of the Independent Consultant’s recommendations in the applicable Report. Unless otherwise directed by the

Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Sheldon Pollock, Assistant Regional Director, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York 10281, or such other address as the Commission staff may provide.

(vii.) CCM shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.

(viii.) To ensure the independence of the Independent Consultant, CCM:

(ix.) Shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and

(x.) Shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

E. CCM shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with CCM, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with CCM, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

F. Respondent shall pay disgorgement and prejudgment interest totaling \$75,654.04 to affected investors as follows:

(i.) Respondent shall pay disgorgement of \$66,635 and prejudgment interest of \$9,019.04, consistent with the provisions of this Subsection F and subject to the offset provisions of Subsection F. (vii) below.

(ii.) Within ten (10) days of the entry of this Order, Respondent shall deposit the full amount of the disgorgement and prejudgment interest (the "Distribution Fund"), less monies already distributed to investors, into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. If timely deposit is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600].

(iii.) Respondent shall be responsible for administering the Distribution Fund and may hire a professional acceptable to the Commission staff, at its own cost, to assist it in the administration of the distribution. The costs and expenses of administering the Distribution Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Distribution Fund.

(iv.) Respondent shall distribute the amount of the Distribution Fund to each affected investor an amount representing: (a) the commission-advisory fee offset attributable to the affected investor during the Relevant Period; and (b) reasonable interest paid on such fees,³ pursuant to a disbursement calculation (the “Calculation”) that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection. The Calculation shall be subject to a *de minimis* threshold. No portion of the Distribution Fund shall be paid to any affected investor account in which Respondent or its past or present officers or directors have a financial interest.

(v.) Respondent shall, within ninety (90) days of the entry of this Order, submit a proposed disbursement calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Distribution Calculation to the staff, Respondents shall make themselves available, and shall require any third-parties or professionals retained by Respondents to assist in formulating the methodology for its Calculation and/or administration of the Distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculations and its implementation, and to provide the staff with an opportunity to ask questions. Respondent shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent’s proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that Respondent is notified of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection F.

(vi.) Respondent shall, within thirty (30) days of the written approval of the Calculation by the Commission staff, submit a payment file (the “Payment File”) for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum: (1) the name of each affected investor, (2) the exact amount of the payment to be made from the Distribution Fund to each affected investor, (3) the application of a *de minimis* threshold, and (4) the amount of reasonable interest paid.

³ Reasonable interest will be calculated at the Short-Term Applicable Federal Rate, plus three percent (3%), compounded quarterly from the end of the year when Respondent received the advisory fees to the date the Respondent sent payment to the client.

(vii.) Respondent shall disburse all amounts payable to affected investors within 90 days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph (x.) of this Subsection F. Respondent shall notify the Commission staff of the date[s] and the amount[s] paid in the initial distribution. The amount Respondent pays to affected investors up until the lapse of 90 days following the date of staff's acceptance of the Payment File, will dollar for dollar offset the disgorgement payable to the Commission pursuant to this Subsection F, subject to approval by Commission staff. If, after Respondent's reasonable efforts to distribute the Distribution Fund pursuant to the approved Payment File, Respondent is unable to distribute any portion of the Distribution Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934 when the distribution of the funds is complete and before the final accounting provided for in Paragraph (ix.) below is submitted to Commission staff. Any such payment shall be made in accordance with Paragraph (xi.) below.

(viii.) A Distribution Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§1.468B.1-1.468B.5. Respondent agrees to be responsible for all tax compliance responsibilities associated with distribution of the Distribution Fund, including but not limited to tax obligations resulting from the Distribution Fund's status as a QSF and the Foreign Account Tax Compliance Act ("FATCA"), and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondent and shall not be paid by the Distribution Fund.

(ix.) Within 150 days after Respondent completes the distribution of all amounts payable to the affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection F. The Respondent shall submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund for Commission approval. The final accounting shall be in a format to be provided by the Commission staff. The final accounting and certification shall include: (1) the amount paid to each affected investor, with reasonable interest reported separately; (2) the date of each payment; (3) the check number or other identifier of money transferred to each affected investor; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate an affected investor whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Distribution Fund to affected investors in accordance with the Payment File approved by the Commission staff. Respondent shall submit the final accounting and certification, together with proof and supporting documentation of such payment in a form acceptable to Commission staff, under a cover letter that identifies Comprehensive Capital Management, Inc. as the Respondent in these proceedings and the file number of these proceedings to Sheldon Pollock, Assistant

Regional Director, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York 10281, or such other address as the Commission staff may provide. Any and all supporting documentation for the accounting and certification shall be provided to the Commission staff upon request, and Respondent shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(x.) The Commission staff may extend any of the procedural dates set forth in Paragraphs (ii.) through (ix.) of this Subsection F for good cause shown. Deadlines for dates relating to the Distribution Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

(xi.) Respondent's transfer of any undistributed funds to the Commission for transmittal to the United States Treasury must be made in one of the following ways:

- (a) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (b) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (c) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341 6500
South MacArthur Boulevard Oklahoma City, OK 73169.

Payments by check or money order must be accompanied by a cover letter identifying Respondent as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Sheldon Pollock, Assistant Regional Director, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York 10281, or such other address as the Commission staff may provide.

G. Respondent shall pay a civil money penalty in the amount of \$300,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

- (i.) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (ii.) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (iii.) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341 6500
South MacArthur Boulevard Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying CCM as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Sheldon Pollock, Assistant Regional Director, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York 10281, or such other address as the Commission staff may provide.

H. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary